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Attorneys for the United States

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

DREE ANN CELLEMME,

Plaintiff,

v.

JEFF SESSIONS, ATTORNEY
GENERAL, U.S. DEPARTMENT OF
JUSTICE; and FEDERAL BUREAU
OF INVESTIGATION,

Defendants.

Case No. 2:16-CV-02539-JAD-CWH

**UNOPPOSED MOTION FOR LEAVE TO
FILE UNOPPOSED MOTION FOR RELIEF
FROM REQUIREMENT THAT PERSON
WITH SETTLEMENT AUTHORITY
ATTEND SETTLEMENT CONFERENCE**

EXPEDITED REVIEW REQUESTED

Defendants hereby move for leave to file the attached Unopposed Motion for Relief from Requirement that Person with Settlement Authority Attend Settlement Conference. Plaintiff Dree Ann Cellemme ("Plaintiff") was contacted and has advised that she does not object to Defendants' motion for leave.

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BACKGROUND

On February 10, 2017, the Court scheduled an early neutral evaluation (“ENE”) session in this case for April 13, 2017, at 1:30 p.m. before United States Magistrate Judge Peggy A. Leen. (ECF No. 18). The order setting the ENE conference requires a government representative with “full [settlement] authority” to attend the conference. (ECF No. 18 p. 1). The order also requires that any request for an exception to the attendance requirement be filed within seven days after the issuance of the Court’s order. (ECF No. 18 p. 2). The order scheduling the ENE session issued on February 10, 2017, and thus the deadline for seeking exceptions to the Court’s attendance requirements was February 17, 2017. (ECF No. 18 p. 2).

ARGUMENT

Defense counsel has been out of the office on business and for numerous health issues and medical appointments over the last month and was unable to file a timely motion for relief from the Court’s ENE attendance requirements. (Vance Decl. ¶ 4). Defense counsel contacted Plaintiff via e-mail and Plaintiff advised that she does not object to Defendants’ request for leave to file their Unopposed Motion for Relief from Requirement that Person with Settlement Authority Attend Settlement Conference. (Vance Decl. ¶ 3). Moreover, no prejudice would result from the granting of the motion because both parties wish for the ENE session to proceed. Under the circumstances, the motion for leave should be granted so that Defendants’ underlying motion can be considered and decided before the ENE session takes place.

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1 **CONCLUSION**


2 For the reasons argued above, Defendants respectfully request that Defendants' Unopposed
3 Motion for Leave to File Unopposed Motion for Relief from Requirement that Person with Settlement
4 Authority Attend Settlement Conference be granted.

5 Respectfully submitted,

6 STEVEN W. MYHRE
Acting United States Attorney

7 /s/ Holly A. Vance
8 HOLLY A. VANCE
Assistant United States Attorney

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10 IT IS SO ORDERED this 27th day of
11 March, 2017.

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13 Peggy A. Leen
14 United States Magistrate Judge
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CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing **UNOPPOSED MOTION FOR LEAVE TO FILE UNOPPOSED MOTION FOR RELIEF FROM REQUIREMENT THAT PERSON WITH SETTLEMENT AUTHORITY ATTEND SETTLEMENT CONFERENCE** was made through the Court's electronic filing and notice system or, as appropriate, by sending a copy of same by first class mail, addressed to the following addressees, on this 21st day of March, 2017.

Addressee:

Dree Ann Cellemme
10755 Scripps Poway Parkway, Ste 403
San Diego, CA 92131

/s/ Holly A. Vance
HOLLY A. VANCE

STEVEN W. MYHRE
Acting United States Attorney

HOLLY A. VANCE
Assistant United States Attorney
100 West Liberty Street, Suite 600
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Attorneys for the United States

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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DREE ANN CELLEMME,

Plaintiff,

v.

JEFF SESSIONS, ATTORNEY
GENERAL, U.S. DEPARTMENT OF
JUSTICE; and FEDERAL BUREAU
OF INVESTIGATION,

Defendants.

Case No. 2:16-CV-02539-JAD-CWH

DECLARATION OF HOLLY A. VANCE

I, Holly A. Vance, hereby declare as follows pursuant to 28 U.S.C. § 1746:

1. I serve as an Assistant United States Attorney with the Department of Justice, United States Attorney's Office in Reno, Nevada. I have served in that capacity since October 2008.

2. I have been assigned to defend the litigation entitled *Cellemme v. Sessions et al.*, Case No. 2:16-CV-02539-JAD-CWH.

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I declare under penalty of perjury that the foregoing is true and correct based on my personal knowledge.

Holly A. Vance
HOLLY A. VANCE
Assistant United States Attorney

STEVEN W. MYHRE
Acting United States Attorney

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UNITED STATES DISTRICT COURT

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**UNOPPOSED MOTION FOR RELIEF
FROM REQUIREMENT THAT PERSON
WITH SETTLEMENT AUTHORITY
ATTEND SETTLEMENT CONFERENCE**

EXPEDITED REVIEW REQUESTED

An early neutral evaluation (“ENE”) session is scheduled in this case for April 13, 2017, at 1:30 p.m. before United States Magistrate Judge Peggy A. Leen. (ECF No. 18). The order setting the ENE conference requires a government representative with “full [settlement] authority” to attend the conference. (ECF No. 18 p. 1). For the reasons argued below, Defendants respectfully request that the Court authorize Assistant United States Attorney (“AUSA”) Holly A. Vance to participate in the

1 settlement conference in person as the sole representative for the government. Plaintiff Dree Ann
2 Cellemme (“Plaintiff”) was contacted and has advised that she has no objection to Defendants’ request.

3 ARGUMENT

4 The federal government is unlike any other litigant. *U.S. v. U.S. Dist. Court for the N. Mariana*
5 *Islands*, 694 F.3d 1051, 1059 (9th Cir. 2012). Because the government handles a very large number of
6 cases, it would be impractical, if not physically impossible, for those with settlement authority to prepare
7 for — and appear at — all settlement conferences. *Id.* The Advisory Committee notes that accompany the
8 1993 amendments to Federal Rule of Civil Procedure 16 acknowledge the unique position that the federal
9 government occupies as a litigant: “Particularly in litigation in which governmental agencies * * * are
10 involved, there may be no one with on-the-spot settlement authority, and the most that should be expected
11 is access to a person who would have a major role in submitting a recommendation to the body or board
12 with ultimate decision-making responsibility.”

13 The government delegates settlement authority to select individuals in order to promote
14 centralized decision-making. *U.S. Dist. Court for the N. Mariana Islands* at 1059-6060. Centralized
15 decision-making promotes three important government objectives. *Id.* First, it allows the government to
16 act consistently in important cases. *Id.* Second, centralized decision-making allows the executive branch
17 to pursue policy goals more effectively by placing ultimate authority in the hands of a few officials. *Id.*
18 Third, by giving authority to high-ranking officials, centralized decision-making better promotes political
19 accountability. *Id.* In light of these principles, the Ninth Circuit has determined that the district court
20 should adopt a “practical approach” in deciding whether to require a government representative with full
21 settlement authority to attend a pre-trial conference. According to the Ninth Circuit, only as a “last resort”
22 should the district court require an official with full settlement authority to participate in a pre-trial
23 conference in person. *Id.*

Consistent with *U.S. Dist. Court for the N. Mariana Islands*, the government routinely requests that the district court allow the line attorney assigned to the case to appear in person at an ENE conference as the sole representative for the government. Before the settlement conference, that line attorney discusses the case thoroughly with those government representatives who do have settlement authority in order to determine the range of settlement offers that would be acceptable to the government. This approach has not hampered settlement discussions or created an impediment to settlement in the hundreds of ENE conferences in which the government has participated over the years. In fact, hundreds of cases involving the government have settled over the years utilizing this approach. Accordingly, Defendants respectfully request that the Court authorize AUSA Vance to participate in the settlement conference as the sole representative for the government. Defense counsel contacted Plaintiff who advised that she does not object to Defendants' request. (Vance Decl ¶ 3).

CONCLUSION

For the reasons argued above, Defendants respectfully request that the Court grant Defendants' Unopposed Motion for Relief from Requirement that Person with Settlement Authority Attend Settlement Conference.

Respectfully submitted,

STEVEN W. MYHRE
Acting United States Attorney

/s/ Holly A. Vance
HOLLY A. VANCE
Assistant United States Attorney

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing **UNOPPOSED MOTION FOR RELIEF FROM REQUIREMENT THAT PERSON WITH SETTLEMENT AUTHORITY ATTEND SETTLEMENT CONFERENCE** and **EXPEDITED REVIEW REQUESTED** was made through the Court's electronic filing and notice system or, as appropriate, by sending a copy of same by first class mail, addressed to the following addressees, on this 21st day of March, 2017.

Addressee:

Dree Ann Cellemme
10755 Scripps Poway Parkway, Ste 403
San Diego, CA 92131

/s/ Holly A. Vance
HOLLY A. VANCE